

**United States Department of Labor
Employees' Compensation Appeals Board**

K.P., Appellant

and

**U.S. POSTAL SERVICE, NORTHWESTERN
STATION, Detroit, MI, Employer**

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**Docket No. 13-676
Issued: June 11, 2013**

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 30, 2013 appellant, through her representative, filed a timely appeal from the December 28, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's occupational left hip injury caused disability for work beginning October 2, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In a prior appeal,² the Board noted that on August 7, 1996 appellant, a 35-year-old letter carrier, sustained a traumatic injury in the performance of duty when she stepped down onto a loose step and felt sharp pain in her left leg. OWCP accepted her claim for left ankle tendinitis. In 2010 it terminated appellant's compensation benefits. The Board affirmed, finding that the weight of the medical evidence was represented by the opinion of Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon and impartial medical specialist. His opinion established that appellant's 1996 left ankle tendinitis had resolved on a clinical basis. The Board also found that the weight of the medical evidence, again represented by the opinion of Dr. Obianwu, established that appellant's low back and left hip pathology were unrelated to the August 7, 1996 work injury. The facts of this case as set forth in the Board's prior opinion are hereby incorporated by reference.

On May 12, 2011 appellant filed an occupational disease claim alleging that the severe arthritic changes in her left hip were a result of her federal employment. She noted that walking at work aggravated her left hip. "Trying to work at all with an altered gait [from the left ankle injury] is the primary problem."

On February 1, 2012 shortly before the Board issued its decision on the 1996 traumatic injury claim, OWCP accepted appellant's occupational disease claim for aggravation of unspecified osteoarthritis of the left pelvis/thigh. It noted that the medical evidence supported that work factors of walking, standing and climbing stairs had aggravated appellant's preexisting degenerative left hip condition.

Appellant then filed a claim for wage-loss compensation beginning October 2, 2010. OWCP referred her, together with the medical record and a statement of accepted facts, to Dr. Michael E. Holda, a Board-certified orthopedic surgeon, for a second opinion.³

Dr. Holda examined appellant on May 9, 2012. He related her complaints of daily, continuous left hip pain aggravated by repetitive movement, sitting and walking too long, and going up and down the stairs. Dr. Holda related her history and described his findings on physical examination. He also reviewed appellant's medical record. Dr. Holda diagnosed bilateral moderate degenerative hip arthritis. He explained that this bilateral arthritis was due to the aging process and was consistent with appellant's age. It was Dr. Holda's opinion that work factors, such as walking and delivering mail, symptomatically would exacerbate her degenerative disease, but it was difficult to say whether these factors would have aggravated the pathology, that is, would have increased the arthritis. He noted that people have similar arthritic hip conditions without a history of constant walking or constant activity, such as appellant performed delivering mail. Dr. Holda concluded that appellant's bilateral degenerative hip disease was

² Docket No. 11-1439 (issued February 15, 2012).

³ As the Board noted in the prior appeal, Dr. Holda provided a second opinion in April 2010 finding no evidence of ongoing tendinitis in the left ankle. Appellant's examination was normal. Dr. Holda also found that the degenerative condition of her left hip was unrelated to the 1996 work injury. The statement of accepted facts advised that appellant's occupational disease claim relating to the severe arthritic changes in her left hip "has been denied at this time."

preexisting due to the aging process and was symptomatically exacerbated only by her work condition. He found no objective evidence of ongoing injury or disability to her hip as a result of her hip injury in 1992.⁴ Based on the work injury only, appellant required no restrictions as a result of her hip condition.

On June 14, 2012 OWCP denied appellant's claim for wage-loss compensation beginning October 2, 2010. On December 28, 2012 its hearing representative affirmed, finding that Dr. Holda's opinion established that the claimed disability for work was due to the aging process and not to the resolved ankle injury or to employment factors. Further, appellant had submitted no reasoned medical evidence to support that her disability for work was due to a condition caused or aggravated by factors of employment.

Appellant's representative argues that Dr. Holda could not produce an independent finding because he had previously examined appellant and already offered an opinion that her left hip arthritis was unrelated to her 1996 left ankle injury. The representative notes that the statement of accepted facts included the following statement in bold print: "The claimant has a preexisting degenerative condition to her left hip which is not work related." He argues that this is a highly leading statement. Finally, the representative argues that Dr. Holda reached two unfair conclusions. Just because other people of appellant's age who do not deliver mail can develop hip arthritis in no way addresses whether appellant's arthritis was not at least somewhat worse because she delivered mail. Also, Dr. Holda engaged in speculation when he stated that it was difficult to say whether the employment factors would have aggravated appellant's hip pathology. Finally, appellant's representative argues that Dr. Holda did not clearly resolve the issue of contribution.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,⁶ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁷

It is not sufficient for the claimant to establish merely that he or she has disability for work. He or she must establish that his or her disability is causally related to the accepted employment injury. The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an

⁴ OWCP accepted that appellant sustained a left hip and left shoulder strain in 1992. She returned to regular duty within a week of filing her claim. OWCP File No. xxxxxx859.

⁵ 5 U.S.C. § 8102(a).

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

accurate history of the employment injury, and must explain from a medical perspective how the current disabling condition is related to the injury.⁸

OWCP is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on it to see that its administrative processes are impartially and fairly conducted.⁹ Although the claimant has the burden of establishing entitlement to compensation, it shares responsibility in the development of the evidence.¹⁰ Once OWCP starts to procure medical opinion, it must do a complete job.¹¹ It has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case.¹²

ANALYSIS

Appellant filed a claim for wage-loss compensation beginning October 2, 2010. She therefore has the burden to establish that the disability for which she claims compensation was causally related to the accepted aggravation of her left hip osteoarthritis.

Appellant submitted no medical opinion directly addressing her disability being October 2, 2010. OWCP referred her to Dr. Holda for a second opinion. It was Dr. Holda's opinion that occupational factors such as walking and delivering mail exacerbated appellant's left hip symptoms but did not actually increase or worsen the underlying pathology.

Dr. Holda did not directly address the issue of disability for work beginning October 2, 2010. He did not explain whether the exacerbation of appellant's left hip symptoms disabled her at any time, or whether the exacerbation ceased before the period of disability for which she claims compensation.

Further, the statement of accepted facts, upon which Dr. Holda was to base his opinion, incorrectly noted that appellant's occupational disease claim involving severe arthritic changes to her left hip "has been denied at this time." In fact, OWCP accepted this claim several months earlier for aggravation of unspecified osteoarthritis of the left pelvis/thigh.

The Board finds that further development of the medical evidence is warranted. Having undertaken development of the medical opinion evidence by referring appellant to a second-opinion physician, OWCP had an obligation to do a complete job and obtain an evaluation that would resolve the issue involved in this case. The Board will set aside OWCP's December 28, 2012 decision and remand the case for a proper statement of accepted facts and a second opinion

⁸ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁹ *Thomas M. Lee*, 10 ECAB 175 (1958).

¹⁰ *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹¹ *William N. Saathoff*, 8 ECAB 769 (1956).

¹² *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983); *Richard W. Kinder*, 32 ECAB 863, 866 (1981) (noting that the report of OWCP referral physician did not resolve the issue in the case).

that will resolve whether appellant's occupational left hip injury caused disability for work beginning October 2, 2010. After such further development as may become necessary, OWCP shall issue a *de novo* decision on appellant's claim for wage-loss compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical opinion evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: June 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board